IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
Media & Communications List
BETWEEN:

Claim No. KA-2024-000059

(1) MARTIN HIBBERT
(2) EVE HIBBERT
(by her mother and litigation friend Sarah Gillbard)

Claimants/Respondents

-and-

RICHARD HALL

Defendant/Appellant

APPELLANT'S SKELETON ARGUMENT

Introduction

1 The judgment of Master Davison of 8th February 2024 effectively found, in the simplest of terms, that the facts and matters surrounding the Manchester Arena events of 22nd May 2017 had already been decided upon by a court or tribunal of competent jurisdiction and ought not to be relitigated.

2 The Master categorised the salient points as being "Issue 1" at paragraphs 24-25 of the judgment. This concerned the "public" question of whether the bombing had or had not occurred. The learned Master said this at paragraph 25:

> "I do not propose to engage with the detail of the defendant's evidence. Suffice it to say that, although his beliefs may be genuinely held, his theory that the Manchester bombing was an operation staged by government agencies in which no one was genuinely killed or injured is absurd and fantastical and it provides no basis to rebut the conviction [of *Hashem* Abedi]."

3 He then went on to define the "private" matters affecting the Claimants as "Issues 2, 3 and 4" from paragraph 26. These covered their presence at the Ariana Grande concert;

the fact of their injuries and whether those injuries had been caused by the explosion of a bomb.

4 The learned Master tied the Issues together at paragraph 37.

> ". . . I have already referred to the inherent implausibility of the defendant's "staged attack" hypothesis. Whilst acknowledging that issues as to the claimants' presence at the attack and the attack itself are separate and distinct, once the defendant's general hypothesis has been rejected (as I have rejected it) it is unrealistic to maintain that the claimants were not there and were either not severely injured at all or acquired their injuries earlier and by a different mechanism than the bombing. Indeed, the latter points are simply preposterous."

5 It is submitted that the Master was not entitled to find that any court or tribunal of competent jurisdiction had in fact decided upon Issue 1 at all. Accordingly, the Master was wrong as a matter of law to find that the criteria for summary judgment under CPR 24 were engaged on that point.

6 This being the case, the converse of the conditions set out in paragraph 37 arise and it would be inappropriate for the Master's findings on the "private" Issues to stand.

7 This Court will not need to be reminded of CPR 52.6.

> Permission to appeal test—first appeals
> (1) Except where rule 52.7 or rule 52.7A applies, permission to appeal may be given only where—
> (a) the court considers that the appeal would have a real prospect of success; or
> (b) there is some other compelling reason for the appeal to be heard.

8 Mr Hall will seek to demonstrate that the learned Master was wrong as a matter of law by attaching too much weight to the criminal conviction.

9 The Defendant having demonstrated that there are serious - and comprehensive – factual issues to be tried, the criteria under CPR 24 were not fulfilled and, accordingly, this Appeal does have a real prospect of success.

The Grounds of Appeal

10 The Defendant/Appellant has been acting in person. He sets out 12 Grounds of Appeal which are listed here for the assistance of the Court:

> Main ground of Appeal: Under Civil Procedure Rules, facts must proved at trial, not in a Summary Judgment Hearing.
>
> 1. A comprehensive failure to address factual and relevant evidence from the Defendant
> 2. The failure to give adequate or sufficient reasons for his decision
> 3. [Not listed]
> 4. The right to a fair trial
> 5. The Court's duty to promote early settlement: The Refusal of an Order for the Claimants to produce medical evidence. No proof of the time and place of injuries
> 6. The deprivation of the Defendant's right to explain his full case at trial
> 7. The Guilty Verdict on Hashem Abedi: Section 11, Civil Evidence Act
> 8. The serious failures of the Public Inquiry
> 9. The strange conduct of the emergency services and the involvement of the Counter Terrorism Unit
> 10. Evidence that a pyrotechnic or similar device was used; not a large TATP bomb
> 11. The Defendant's right to bring evidence to trial
> 12. Insufficient reasons for decision given

11 Grounds 7 and 8 are matters concerning the finality of judgments or determinations by statute and at common law. That is Question 1.

12 Grounds 1; 6; 9; 10 and 11 are questions of whether a fuller investigation of the facts would affect the outcome of the case. That is Question 2.

13 Grounds 2 and 12 are the same. For practical purposes they may be subsumed within the discussion of a "fuller investigation of the facts" under Question 2.

14 Ground 4 is the Human Rights point. It is only if Questions 1 and 2 are answered negatively for the Appellant that this comes into play.

15 Ground 5 is an issue for future directions which falls under Question 2.

16 Should it be necessary to do so, then the Appellant may ask the Court for permission to amend the Grounds of Appeal with reference to CPR 52.17. However, it is submitted that, for the purposes of this Permission hearing, the Court can readily-ascertain the categorisation of the Grounds.

QUESTION 1: THE FINALITY OF JUDGMENTS OR DETERMINATIONS

The conclusions of the Public Inquiry

17 This point may be dealt with shortly. The Claimants referred to Hollington v Hewthorn [1943] KB 587 and the Defendant to The Duchess of Kingston's Case 168 ER 175. It was common ground that the Inquiry findings were not binding upon the learned Master, counsel for the Claimants stating as follows at page 3 of the transcript of proceedings:

> "we accept fully that insofar as the inquiry has reached any findings, those findings are not either binding upon you and in fact are, from a strict evidential point of view, irrelevant."

The criminal conviction of *Hashem* Abedi: Section 11 of the Civil Evidence Act 1968

18 This ought to have been the central question within the application for summary judgment. However, the 1968 Act was not mentioned at all until paragraphs 16-17 of the Claimants' skeleton argument and then only by way of recital rather than extrapolation.

19 Similarly, the point was raised in oral argument in very broad terms as recorded at page 4C of the proceedings transcript and again at pages 5C to 7E but without any real attempt to explain how, as a matter of law, the criminal conviction of "a person" can amount to admissible evidence that *another* person, not so convicted, falls within the precepts of Section 11 of the Act. The argument is not self-evident.

20 The perpetrator of the attack is ordinarily understood to have been Salman Abedi who himself died in the blast at the Manchester Arena.

21 It is common ground that Salman Abedi has been convicted of no offence.

22 It was his brother, Hashem Abedi, who was convicted of the 22 counts of murder. The jury found that there was a joint enterprise because Hashem Abedi had purchased chemicals and other articles which were used to create and deliver explosive charges at the concert. Hashem Abedi was not present at the time of the detonation. See paragraph 25 of the Sentencing Remarks of Jeremy Baker J of 20 August 2020:

> ". . . it is apparent from the jury's verdict that they were satisfied that, despite the defendant having remained in Libya, he had not withdrawn from the joint venture with his brother. In this regard it is of note that after his return to the UK, Salman Abedi remained in regular electronic contact with Libya, including a four minute phone conversation during the course of his final journey to the Manchester arena, which I am satisfied was with the accused."

23 "The Defendant's Assertions" of which the Claimants complain are set out at paragraph 17 of the Particulars of Claim. The first of them, marked "a.", reads:

> "The perpetrator of the Attack did not die at the scene but drove off, chased by police and was subsequently arrested. Not only does the Defendant state this, but he claims that this is proved by police radio communications, police witness testimony, and "the arrest video". The import of this is that, if true, the person who caused the life-changing injuries to our clients remains secretly protected by the British Government and may or may not have faced justice for his actions."

24 Although not mentioned by name, it is plain that the Claimants are here referring to Salman Abedi.

25 The Claimants do not plead that the Defendant has made any "Assertions" with reference to the convicted brother Hashem Abedi which found a cause of action either within their Particulars of Claim or their Reply.

26 It therefore follows that Section 11 of the 1968 Act was of no relevance to the summary judgment application and the learned Master was not entitled to rely upon it as a matter of law. No authorities to the contrary were cited to the Master.

27 With respect to the decision of the Hon Mrs Justice Steyn of 15th April 2024, paragraphs 4 and 5 of her Order similarly do not explain how, as a matter of statutory interpretation,

the conviction of "a person" under the Act can apply to third parties. If that is the case, then the point requires an authoritative ruling by a superior court, it being one of significant general public importance.

28 If this appellate Court does not accept that short argument, then the Defendant will submit this.

29 At paragraph 21 of the learned Master's judgment the following was said.

> "It was held in CXX v DXX [2012] EWHC 1535 (QB) that the effect of section 11 was that a criminal conviction was not merely a trigger for the presumption in subsection (2)(a) but "a weighty piece of evidence of itself" which, in that case, was not displaced by the defendant's attack on the claimant's credibility.

30 According to the Authorities bundle (more below) this case was not cited before the Court. It is not referred to in the Claimants' skeleton argument for the summary judgment application, nor was it argued according to the transcript of the hearing. In any event, with all respect to the learned Master, the analysis which he made of CXX was incomplete.

31 In that case Spencer J had in fact considered the tension between the conflicting views of Lord Denning MR and Buckley LJ in the earlier matter of Stupple. It is important to note that the contrary opinions were addressed by the learned authors of Cross and Tapper before the principles were then cojoined by Moore Bick J in Phoenix Marine. The analysis given by Spencer J is set out at paragraphs 37-39 of CXX:

> "Once again, fresh authority was cited at the hearing of the appeal which was not cited to the Master. In his skeleton argument Mr Davison draws attention to the decision of the Court of Appeal in *Stupple v Royal Insurance Co Ltd* [1971] 1 QB 50, and the difference of opinion there between Lord Denning MR and Buckley LJ as to the practical effect of the presumption in section 11(2) of the Civil Evidence Act 1978. Lord Denning's view was that the conviction is a "weighty piece of evidence of itself". Buckley LJ's view was that section 11(1) was merely a trigger for the presumption without any evidential weight in itself. Again, the learned editors of Phipson (17th edition) address this conflict (at paragraph 43-88) suggesting that the view of Lord Denning is to be preferred. The learned editors of *Cross and Tapper on Evidence* express a contrary view. This conflict was

considered by Moore-Bick J (as he then was) in *Phoenix Marine Inc v China Ocean Shipping Co* [1999] 1 All ER 138. At paragraph 143 J he said:

> "I prefer Lord Denning MR's view, essentially for the reasons suggested in *Phipson*…In particular, once the conviction is rendered admissible as evidence of the commission of the offence, I see no reason why the weight to be attached to it should not be a matter for the trial judge, as with any other piece of evidence."

A contrary view had been taken by Stirling J in *Wright v Wright* (1971)115 Sol Jo 173, in the hearing of a divorce suit where the husband had been convicted of rape but was still denying it. He preferred the approach of Buckley LJ.

I too prefer the approach of Lord Denning MR, for the reasons given by Moore-Bick J in *Phoenix*. These convictions in the present case must be treated as weighty evidence in themselves, and all the weightier in the light of the unsuccessful criminal appeal."

32 That fundamental coda to Phoenix Marine was left out of consideration by Master Davison in the present matter, namely, that the weight to be attached to an *admissible* conviction should in any event be a matter for the trial judge. The conviction of the irrelevant third party Hashem Abedi is not admissible within the boundaries of the Act. If it is admissible, then it will have little weight, not least because the Claimants do not rely upon the conviction of Hashem Abedi in their pleadings.

Res Judicata?

33 There have been no prior proceedings between the parties in the present matter. There is no estoppel by record. Does some kind of *judgment in rem* nonetheless arise from the Inquiry or the criminal proceedings against the world at large? No. As we see from Halsbury Volume 12:

> 1596. Importance of distinction between judgments in rem and judgments in personam or between parties.
> A judgment in rem (that is, a judgment of a court of competent jurisdiction determining the status of a person or thing or the disposition of a thing, as distinct from a particular interest in it of a party to the litigation) is conclusive of the facts or state of things actually decided or effected; and is conclusive against all persons, whether parties, privies or strangers to the decision. Other judgments which affect the interests of the parties rather than their status, often referred to as judgments in personam (or judgments between parties), have the effect that the parties to them,

and their privies, are prevented from denying what the judgment itself establishes, and the grounds upon which it was founded; but, save to prove their existence, date and consequences, such judgments are generally inadmissible for or against strangers.

Thus the most important distinction between judgments in rem and judgments in personam is that, whereas the latter are binding only as between the parties to them and those who are privy to them, the judgment in rem of a court of competent jurisdiction is, as regards persons domiciled and property situated within the jurisdiction of the court pronouncing the judgment, conclusive against all the world in whatever it settles as to the status of the persons or property, or as to the right or title to the property, and as to whatever disposition it makes of the property itself, or of the proceeds of its sale. In other words all persons, whether party to the proceedings or not, are estopped by a judgment in rem from averring that the status of persons or things, or the right or title to property, is other than the court has by such a judgment declared or made it to be."

34 Examples of such judgments or potential judgments are given at paragraphs 1598 and 1599 of that same work. Prior proceedings in the present matter do not fall into either category.

QUESTION 2. WOULD A FULLER INVESTIGATION OF THE FACTS AFFECT THE OUTCOME OF THE CASE?

The Master took the wrong approach to the consideration of authorities

35 This is a preliminary procedural error. It was then of practical application insofar as the Master failed to give adequate consideration to the authorities and the available facts.

36 The crux of the judgment of the learned Master may be found at paragraph 14 of the transcript which replicates the summary of the learned authors of the White Book at paragraph 24.3.2 of that work. Indeed, the Court seems to have relied heavily upon that text as may be explained by the Respondents' skeleton argument for the summary judgment application which states at paragraph 7 that the principles:

". . . are set out in the White Book at §24.2.3 and the Court will be very familiar with them, but they are summarised (and appropriately adapted) here for convenience."

37 It is submitted that the Court took the wrong approach in that regard. As we see from the Practice Direction (Citation of Authorities) [2012] 1 WLR 780 at paragraphs 6 and 13:

> "Where a judgment is reported in the official Law Reports (AC, QB, Ch, Fam) published by the Incorporated Council of Law Reporting for England and Wales, that report must be cited. These are the most authoritative reports; they contain a summary of the argument. Other series of reports and official transcripts of judgment may only be used when a case is not reported in the official Law Reports. . . . . .
>
> Judgments reported in any series of reports, including those of the Incorporated Council of Law Reporting, should be provided either by way of a photocopy of the published report or by way of a copy of a reproduction of the judgment in electronic form that has been authorised by the publisher of the relevant series. . ."

38 The Joint Authorities Bundle for the hearing on 29th January 2024 contained only these law reports.

> Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch)
> Vardy v Rooney [2021] EWHC 1888 (QB)
> Okpabi v Royal Dutch Shell Plc [2021] UKSC 3; [2021] Bus LR 332

39 The following authorities were not included within that bundle although it is plain from the KB Guide that they should have been.

> Swain v Hillman [2000] PIQR P51 (CA)
> ED & F Man Liquid Products Ltd v Patel [2003] EWCA Civ 472
> Royal Brompton Hospital NHS Trust v Hammond (No.5) [2001] EWCA Civ 550
> Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2006] EWCA Civ 661

40 Although it is correct to say that the Easyair criteria are an appropriate starting point for an assessment as to whether a case is suitable for summary judgment, it ought not to be considered an endpoint. Each case must turn upon its own facts and certain of the "bullet points" set out by Lewison J will be more relevant than others. Indeed, that learned judge expressly guided practitioners towards the appropriate authorities in respect of each principle.

41 In that regard, the following are or should have been of particular relevance in the present matter but Master Davison was not directed to them.

The legal principles not considered

42 In Swain v Hillman [2000] PIQR P51 (CA) Lord Woolf MR sounded a clear note of caution as to the proper approach at P55.

> ". . . matters . . . . will have to be considered carefully by the judge at the trial. I am not seeking to indicate what his view should be on those facts. It is a matter to be dealt with by the judge at a trial and not at a summary hearing. Useful though the power is under Part 24, it is important that it is kept to its proper role. It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial. As Mr Bidder put it in his submissions, the proper disposal of an issue under Part 24 does not involve the judge conducting a mini-trial, that is not the object of the provisions; it is to enable cases, where there is no real prospect of success either way, to be disposed of summarily."

43 As Potter LJ went on in ED & F Man Liquid Products Ltd v Patel [2003] EWCA Civ 472 at paragraph 8:

> "I regard the distinction between a realistic and fanciful prospect of success as appropriately reflecting the observation in the Saudi Eagle that the defence sought to be argued must carry some degree of conviction. Both approaches require the defendant to have a case which is better than merely arguable, as was formerly the case under R.S.C. Order 14 . Furthermore, both CPR 13.3(1) and 24.2 have provisions whereby, for the purposes of doing justice between the parties, the court can order that judgment be set aside under 13.3.1(b) if it appears to the court that there is some other good reason to do so, and, under 24.2(b) that summary judgment be withheld on the ground that there is some compelling reason why the case or issue should be disposed of at trial.

44 The case of Royal Brompton Hospital NHS Trust v Hammond (No.5) [2001] EWCA Civ 550 was particularly apposite. As Aldous LJ observed at paragraphs 19-20 of that case:

> ". . . . As 24PD-001 CPR makes clear, the Court when considering whether to strike out should consider the evidence which can reasonably be expected to be available at trial and the lack of it. In this case the judge had read the expert's reports and had not ruled that they could not be supplemented during the trial. In fact he never considered whether they would be or could be nor what might arise during the trial. His decision was based upon perceived deficiencies in Mr Down's witness statement which was the evidence directed to the alleged sub-standard quality of the co-ordination drawings produced by AA. But the parties' experts had met, but

due to the lack of time had been unable to consider all the drawings that needed to be considered. . . . .

That statement was brought to the judge's attention. It follows that the judge knew that the totality of the evidence that the parties would wish to bring before the court was unlikely to be contained in the witness statements. Thus he knew that he was deciding what Mr Bartlett termed a 'no case to answer' submission without deciding whether any further agreement between the experts would be forthcoming and, if so, whether it would be admitted and if so, whether it would support Brompton's case."

45 In Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd [2006] EWCA Civ 661. As Mummery LJ stated at paragraphs 5 and 6:

". . . In my experience there can be more difficulties in applying the "no real prospect of success" test on an application for summary judgment (or on an application for permission to appeal, where a similar test is applicable) than in trying the case in its entirety (or, in the case of an appeal, hearing the substantive appeal). The decision-maker at trial will usually have a better grasp of the case as a whole, because of the added benefits of hearing the evidence tested, of receiving more developed submissions and of having more time in which to digest and reflect on the materials.

The outcome of a summary judgment application is more unpredictable than a trial. The result of the application can be influenced more than that of the trial by the degree of professional skill with which it is presented to the court and by the instinctive reaction of the tribunal to the pressured circumstances in which such applications are often made."

46 And then at paragraphs 17-18:

"It is well-settled by the authorities that the court should exercise caution in granting summary judgment in certain kinds of case. The classic instance is where there are conflicts of fact on relevant issues, which have to be resolved before a judgment can be given (see Civil Procedure Vol.1 24.2.5). A mini-trial on the facts conducted under CPR Pt 24 without having gone through normal pre-trial procedures must be avoided, as it runs a real risk of producing summary injustice.

In my judgment, the court should also hesitate about making a final decision without a trial where, even though there is no obvious conflict of fact at the time of the application, reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case."

47 By Mr Hall's layperson skeleton argument for the hearing before the Master, various evidential issues were highlighted at paragraphs 3; 8; 14; 17; 18; 22 and 25. These are voluminous. It is fair to infer that the learned Master did not assess the entirety of that evidence for the purposes of the application. It is not mentioned or rejected in any detail in the course of the judgment. That is no criticism of the Master. Self-evidently, an application for summary judgment is precisely that – a summary process. However, the very fact that there was extensive evidence of this kind militated against the suitability of the case for termination under CPR 24 in accordance with the above authorities.

48 In respect of the statutory and common law rules as to the finality of decisions and the hierarchy of courts and tribunals, a Master or Judge must make a cold and dispassionate assessment of the application of those rules. It is inappropriate for any Court to make a qualitative assumption about the evidence on the basis that the facts are somehow "obvious" without actually considering the evidence itself. One need only consider the convictions following the Post Office "Horizon" scandal in that regard.

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[redacted]

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